

Daaibars ag Sentence

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

10 Cr. 510 CS

5 ANDREW BARTOK,

6 Defendant.

7 -----x

8 October 10, 2013

10:45 a.m.

9 White Plains, N.Y.

10 Before:

11 HON. CATHY SEIBEL,

12 District Judge

13 APPEARANCES

14 PREET BHARARA

United States Attorney for the
Southern District of New York

15 JOHN COLLINS

16 JEFFREY ALBERTS

Assistant United States Attorney

17 AMY ATTIAS

Attorney for Defendant

18 JOHN M. MARSH, Postal Inspector

20 SENTENCE RESUMED

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1 THE COURT: Good morning again, everyone.

2 MS ATTIAS: Good morning, Judge.

3 MR. COLLINS: Good morning, your Honor.

4 THE COURT: Please have a seat. Let's pick up where
5 we left off. Mr. Bartok, have you read the presentence report
6 and the addendum?

7 THE DEFENDANT: Yes.

8 THE COURT: And have you discussed them with
9 Ms Attias?

10 THE DEFENDANT: I'm sorry, Judge, I'm having a problem
11 hearing in one ear.

12 THE COURT: Have you discussed the presentence report
13 and the addendum with Ms Attias?

14 THE DEFENDANT: As best we could, yes.

15 THE COURT: Do you have additional matters you'd like
16 to discuss with her?

17 THE DEFENDANT: If I could, yes.

18 THE COURT: Go ahead. I'll wait.

19 MS ATTIAS: Well, Judge, frankly, we had about 40
20 minutes yesterday afternoon and 20 minutes this morning, and
21 what Mr. Bartok wanted to talk about with me, as I made very
22 clear before I left the counsel area downstairs, was the trial
23 and the facts of the case. And I told him that this was not
24 the proper time to be discussing the facts of the case and the
25 incorrect and unjust conviction, that that would be a matter

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1 for appellate counsel.

2 But as far as sentencing goes, one of the objections
3 that I would register is to the inclusion of the entire
4 government's version of the facts. But I can get to that
5 momentarily. We have discussed everything in the presentence
6 report that pertains to sentencing. I stopped the conversation
7 when he started discussing trial strategy because I did not
8 think that this was the appropriate time for that.

9 THE COURT: I think that's right. Mr. Bartok, is
10 there anything about the contents of the presentence report in
11 particular that you wish to discuss with Ms Attias that you
12 haven't?

13 THE DEFENDANT: The answer is yes, Judge.

14 THE COURT: Why don't you point to the paragraph or
15 the sentence you're talking about and confer with her privately
16 on it.

17 THE DEFENDANT: Let's take page 6.

18 THE COURT: Privately.

19 (Pause)

20 MS ATTIAS: Judge, I'd like to proceed.

21 THE DEFENDANT: I'd like to object to something,
22 Judge.

23 THE COURT: I don't want to overhear your
24 conversation. I did hear Mr. Bartok say something about page
25 6. Page 6 is just a description of what Mr. Bartok was charged

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1 with. There's no disputing that's what Mr. Bartok was charged
2 with. So page 6 is not a problem. But I do want the record to
3 be clear that Mr. Bartok has had an opportunity to raise any
4 objections he has to specific factual matters in the
5 presentence report that he thinks are wrong.

6 For example, Mr. Bartok, this is the time in the
7 sentencing where a client might tell a lawyer that there's some
8 mistake in the report regarding his family history or they got
9 something wrong about where he went to school or anything at
10 all. He can also raise objections about the prior criminal
11 history, the facts of that, anything at all. But it's not a
12 time to complain about the charges. If there's something in
13 particular in this report that you think is inaccurate, this is
14 your chance to tell Ms Attias what it is specifically. But
15 you're not allowed to say -- I'm not asking you to talk to
16 me -- you're not allowed to say that the report shouldn't
17 include things like what the charges are. That's allowed to be
18 in the report. You're not allowed to say the report shouldn't
19 include your criminal history. I'm not asking what you should
20 or -- what you think should or should not be in the report.
21 I'm asking you to tell Ms Attias if there is anything that is
22 inaccurate in the report. Not what you think should or
23 shouldn't be in there. It's in there. The question is is it
24 accurate.

25 THE DEFENDANT: Judge.

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1 THE COURT: I don't want you to talk to me. Talk to
2 your lawyer.

3 THE DEFENDANT: I'm having a hard time talking to her
4 because she's shutting me down every three minutes.

5 THE COURT: Speak now or forever hold your peace.

6 THE DEFENDANT: I want to speak to the court about
7 this. I think this is very serious what I have to say.

8 MS ATTIAS: I actually have a list of what he would
9 like the Court to know and what he would like the record to
10 reflect about what he doesn't like about the report.

11 THE COURT: Is there anything else, Mr. Bartok,
12 besides what Ms Attias has on her list that you want to object
13 to in the presentence report? That's a yes or no.

14 THE DEFENDANT: The answer is yes.

15 THE COURT: Right now I'm ordering you to turn to your
16 lawyer and tell her privately what, besides what she has on her
17 list, you object to, and we'll sit here and wait.

18 (Counsel confers with her client)

19 MS ATTIAS: Judge, we can move on.

20 THE COURT: All right. Ms Attias, I know you read the
21 presentence report and the addendum and gone over it with your
22 client, but can you just confirm that for me for the record.

23 MS ATTIAS: Yes, Judge. We now finished in the
24 courtroom going through the last few paragraphs that he wanted
25 to point out to me.

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1 THE COURT: All right.

2 MS ATTIAS: Despite your remarks a few minutes ago
3 mentioning that many of his objections to the presentence
4 report were not apropos I would like to include those just so
5 the record is complete. At paragraph 76 it indicates, and
6 that's at page 18, that in 1993 after being convicted of bad
7 check, basically, he was sentenced to five years imprisonment
8 and that several months later that was converted to 18 months
9 of intensive supervision which he completed.

10 THE COURT: Does the government have any information
11 to the contrary?

12 MR. COLLINS: I don't -- the only information I have,
13 your Honor, is what's contained in the presentence report. If
14 we had known about this obviously we could have talked to the
15 probation officer to try to find whatever documents she has.
16 Obviously, that has the potential, Mr. Bartok's recitation of
17 the facts has the potential of reducing the criminal history.
18 Because if he's saying that it's months --

19 THE COURT: He says it was converted to 18 months. I
20 don't know if the rest of it was parole or probation, but if
21 the sentence ended -- let me look at the guidelines.

22 MS ATTIAS: I just want to be clear that I have not
23 confirmed that, of course. And he is informing me that he
24 actually spent four months in jail before it was converted. So
25 I don't know if it was converted or if he did four months of

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1 the five years and the rest was on probation.

2 THE COURT: 18 months is sort of a boot camp thing.

3 THE DEFENDANT: It's like an intense supervision
4 program.

5 (Counsel confers with her client)

6 THE COURT: That may make a difference under the
7 guidelines. Let me just look. If the sentence was less than
8 ...

9 MR. COLLINS: I'm not sure that it would. It
10 obviously would reduce the criminal history points. If
11 Mr. Bartok is saying that he spent four months in prison that
12 would reduce the points from three to two. However, two points
13 would still be Category II and it would still be two points
14 because it's a misdemeanor conviction that occurred within ten
15 years of the commencement of the offense which is charged in
16 Count 1, which is 2000.

17 THE COURT: Then I will add to paragraph 77 the
18 following. Well, I'll do this. I'll add to paragraph 76 five
19 years imprisonment converted to four months imprisonment and 18
20 months intense supervision, and we'll call it a two-pointer. I
21 don't think it will make any difference to anybody. Five years
22 does seem like a lot for that offense, but of course, it was
23 the fourth fraud count.

24 MR. COLLINS: Do we have to amend paragraph 78 as
25 well, your Honor?

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1 THE COURT: Yes. Then it would change the total of
2 the criminal history points to two criminal history points,
3 Criminal History Category III. All right. What's next,
4 Ms Attias?

5 MS ATTIAS: Judge, that was the only factual
6 discrepancy that Mr. Bartok pointed out in the report. But
7 with your indulgence, I would just like to place his position
8 on the record.

9 THE COURT: Absolutely.

10 MS ATTIAS: He objects to the fact or raises the fact
11 that he was not informed by prior counsel, Ms Florio, that he
12 did not have to participate in this process, and has indicated
13 that he felt that was a violation of his rights. He therefore,
14 along the same lines, objects to the inclusion of all of his
15 personal and family information.

16 He objects to the inclusion under the other arrests
17 section of cases which were dismissed. That begins at page 19.

18 He objects to the inclusion in this at all, even in
19 the description of the charges, to the inclusion of Count 8, 9
20 and 10, 8 and 10 because they were severed and are not the
21 subject of this case, and 9 because he was acquitted of it.

22 One other issue he raised, although it wasn't raised
23 during trial, was that he discovered after trial that he was
24 diabetic and has raised with me that during trial he was not
25 fully mentally present or physically present because he was,

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1 his blood sugar was out of control. I have no personal
2 knowledge of this but I just wanted to place this on the record
3 and I do believe he is being treated for diabetes now.

4 I want to be clear in light of all of this that I will
5 be asking you to assign new appellate counsel. Mr. Bartok has
6 raised very clearly with me several times his intention to
7 raise the issue of ineffective assistance of counsel as it
8 involves Ms Florio. When I came into the case you may recall
9 that because I had prior been involved with the case in my
10 capacity with Federal Defenders, you made a record and asked
11 Mr. Bartok questions basically having him waive his right to
12 raise ineffective assistance as to my participation in the case
13 because he was bringing me in as retained counsel. But he has
14 intent to file an appeal that goes to the ineffective
15 assistance of counsel as regards Ms Florio and I was part of
16 that trial team. So I will be asking you to, unfortunately,
17 assign new appellate counsel because of the complaints about
18 trial strategy and many of the other conversations we've had
19 about the trial prior to these last couple of days.

20 I have one remark to make about the guidelines, but we
21 can talk about that later.

22 THE COURT: First let me address the objections.

23 I have no idea if Ms Florio did or did not tell
24 Mr. Bartok that he had to participate in the process. I would
25 imagine that Probation advises the defendant at the interview

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1 about what it's all about. But there's certainly nothing in
2 the report that would have come from Mr. Bartok that's going to
3 affect the sentence one way or the other. His personal and
4 family data, which he objects to, is not going to move me
5 either way. So if indeed Mr. Bartok participated in the
6 interview with Probation without knowing he could have refused,
7 I don't see how it harmed him at all.

8 The information regarding other arrests is appropriate
9 in a presentence report. The Sentencing Guidelines and the
10 statute and the Supreme Court have said there is really no
11 limit on what the sentencing judge can consider in connection
12 with sentencing. So there's nothing wrong with including it in
13 the report. However, I'm not going to take any dismissed
14 charges into account anyway, because there's no proof that
15 Mr. Bartok did the things he was charged with. I'm not going
16 to strike them from the report, but I'm not going to take them
17 into account either.

18 With respect to Counts 8, 9 and 10, the section of the
19 report that mentions them just describes what the defendant was
20 charged with and he was certainly charged with them. The
21 report makes clear in paragraph 27 that the defendant was found
22 not guilty of Count 9 and that Counts 8 and 10 haven't been
23 tried, so the reader has a completely accurate picture of the
24 status of those counts.

25 And with respect to Mr. Bartok learning after the

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1 trial that he was diabetic and his not being completely himself
2 during the trial, I will say I guess a couple of things. One
3 is for that to warrant a new trial, that would have to have
4 been a very serious condition beyond feeling unwell. I didn't
5 see any signs of that, and apparently, nor did counsel. And
6 Mr. Bartok behaved himself during the trial, but I didn't see
7 any sign that he was in any way unable to comprehend what was
8 going on, and I saw his counsel speak to him and I saw him
9 speak to them. And I don't doubt that if either Ms Attias or
10 Ms Florio, who was not shy about speaking up regarding
11 Mr. Bartok's medical condition, saw any signs that their client
12 was not competent or was out of it, they would have shared
13 those with me. So those objections are overruled.

14 Does the government have objections to the factual
15 recitation in the presentence report?

16 MR. COLLINS: No, your Honor.

17 THE COURT: And I guess, Ms Attias, you mentioned some
18 general objection to the government's version being in the
19 presentence report. It is made clear that it's the
20 government's version, but if there are specific things in there
21 that you think were not supported by the proof at trial, I'll
22 be glad to hear you. I certainly, having reviewed it, think
23 the gist of it was proven at trial abundantly. So unless
24 there's something specific...

25 MS ATTIAS: There is not, Judge. There is nothing

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specific.

THE COURT: All right. Then the findings of fact in the presentence report are my findings of fact. Does the government wish to be heard?

MR. COLLINS: Your Honor, we've already submitted two sentencing submissions, so unless there's anything else you'd like to hear from the government, we'll rest on our memoranda.

THE COURT: Thank you, Mr. Collins.

Ms Attias?

MS ATTIAS: Judge, there is an issue that I just wanted to raise so the record is complete but I chose not to put into my sentencing letter because I didn't really, I wanted to stick to 3553(a), which was really where I thought our discussion should center, but that is the application of the Sentencing Guidelines 5G1.2(d), the stacking provision, which raised the guidelines from a potential 25 years, there are counts that have 20 years maxes and counts that have five years, to 95 years, which is the current guideline which is of course Probation's recommendation and the government's recommendation to give a guideline sentence. And I will say that I discussed this with the government. I just am raising it now for the purposes of having a full record.

5G1.2(d) uses the word shall when giving instructions on how to compute the guidelines, whereas here the guidelines of life are more than what would normally happen. So stacked

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1 up, meaning added up, the maximum amount of time for each one,
2 they come to four counts of 20 years each and three counts of
3 five years each for a total of 95.

4 The Second Circuit has addressed this, has approved
5 the application of the stacking provision but I don't believe
6 that it is mandatory. And the circuits are divided on this.
7 There's not a lot of law on it. It was applied here. The
8 guidelines are 95 years. I think the guidelines should be 25
9 years. But even if you find that they are 25, I'm going to
10 have 3553(a) arguments to make. So regardless --

11 THE COURT: There are circuits that say even under the
12 guidelines -- obviously it's not mandatory because the
13 guidelines aren't mandatory -- but there are cases that say
14 that even under the guidelines, 5G1.2(d) is optional?

15 MS ATTIAS: Yes, that it should be looked at on a
16 case-by-case basis. And of course you would have the option of
17 sentencing him consecutively on each of these counts if you
18 chose to and if you found that that was supported by the facts
19 and the law. So because that could exist, you could find that
20 these were all different conspiracies. And I sort of look at
21 this, but I have a certain perspective in this courtroom,
22 obviously as one, as a charge of one big conspiracy to violate
23 the law and violations of law, that everything he did with his
24 business was one big conspiracy. And I would argue against the
25 consecutive sentencing on each of the counts. But you, of

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1 course, and the government would be free to argue, of course,
2 that each of these different violations, each of these
3 different counts, indicated a different mindset, different set
4 of facts, different actions that had to be taken.

5 For example, counts to defraud a bankruptcy judge,
6 different than counts to defraud clients, etc. So I didn't
7 bring it up, I didn't want to bring it up in the sentencing
8 letters because having done the research it was going to be
9 pages and pages of argument to you about why you should or
10 should not apply 5G1.2(d). But we have circled around to you
11 are possibly asking me couldn't I sentence him consecutively if
12 I found that was supported and if I thought that was fair and I
13 would have answered yes. So you could. And I would have
14 argued that you shouldn't.

15 THE COURT: Which is the argument that you did make in
16 your sentencing letter.

17 MS ATTIAS: Yes. So I believe it's not a mandatory
18 application. But again, I didn't want to spend too much time
19 on it. I just wanted to bring that up here because with all
20 due respect to the framers of the guidelines, 95 years for
21 this, guidelines for any judge to look at, is kind of over the
22 top in my humble opinion. So I would focus your Honor's
23 attention on 3553(a) as opposed to the guidelines. But I did
24 want to note my observation on the guidelines.

25 THE COURT: All right.

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1 MS ATTIAS: That said, I essentially rely on what I
2 wrote in my sentencing letter. And knowing that a plea offer
3 had been made in this case that had a maximum of ten years,
4 certainly your Honor heard much more evidence during the course
5 of the trial because Mr. Bartok chose to go to trial as opposed
6 to avail himself of the plea offer. But I would suggest, and
7 it's not me suggesting, the law is clear that he should not be
8 penalized for exercising his constitutional rights to go to
9 trial. And looking at all of the factors that I mentioned in
10 my letter and talked about and I know you've had a tremendous
11 amount of interaction with Mr. Bartok over these last few
12 years, I would suggest to you that between his health issues,
13 which I'm not saying deserve a variance, and his age, again not
14 so much in terms of a variance but as under 3553(a), and the
15 issues that he's had with gambling for many, many, many years,
16 that as opposed to simply looking at his operating his business
17 as a money-making scheme intentionally defrauding people, what
18 I said in my letter was that it seems to me that that whole,
19 the whole business that he was involved in was almost like one
20 huge craps table. That he would play. That it was a game. He
21 would figure out what motions to do and what things to say and
22 what things not to say, and it kept it going and going and
23 going.

24 I understand that the jury convicted him. He
25 certainly intends to appeal. But taking into account the

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1 gambling, his health, his age, what he did, the relative
2 culpability, the relative sentences for other crimes that get
3 sentenced in this building, I would suggest that something in
4 the area of six to eight years adequately punishes him under
5 3553(a) for what he was convicted of without going over the
6 top. I'm not even going to talk about the guidelines, their
7 calculation here driven by the amount. It's hard to imagine
8 anyone giving him a guideline sentence, although I respect the
9 government's suggestion and Probation's suggestion. But Judge,
10 when you look at what is sufficient but not greater than
11 necessary, I think that something in that range is appropriate
12 here. And I otherwise stand by whatever remarks I made in my
13 letter.

14 THE COURT: All right. I note that Mr. Bartok
15 objected to the information in the presentence report that he
16 provided to Probation. I guess that would include the
17 information about his health. So on the one hand, he's asking
18 me to take it into account; on the other hand, he doesn't think
19 it should be in there. Which is a certain irony.

20 MS ATTIAS: I didn't really think of that, Judge.

21 THE COURT: As well as his gambling history. However,
22 I didn't need a presentence report to tell me about
23 Mr. Bartok's gambling history. And with respect to the health
24 issues, I'm going to consider them over his objection because
25 considering them can only help him. I'm not saying it will

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1 help him. But it can only help him, it's certainly not going
2 to hurt him.

3 And with respect to his mental and emotional health
4 and gambling history, again I think those things can only help
5 him in terms of this sentencing. The part that hurts him comes
6 from the trial record. So I'm going to essentially let him
7 have his cake and eat it too.

8 Mr. Bartok, if there's anything you'd like to say
9 before I impose sentence, I will hear you at this time.

10 THE DEFENDANT: Yes, Judge.

11 THE COURT: It's all right with me if you want to stay
12 seated. If you're more comfortable sitting down it's all right
13 with me.

14 THE DEFENDANT: Okay. Thank you.

15 I just want to focus in on one thing that I think is
16 going to be very inflammatory and prejudicial against me when
17 the Bureau of Prisons receives this report, and I guess they
18 read it and they review it as far as your classification and as
19 far as future parole or probation reports. And the part that I
20 object to is that I'd like, if it's possible, to take out the
21 arrests where the cases were dismissed. Because there was no
22 probable cause to arrest me.

23 THE COURT: That objection is denied.

24 THE DEFENDANT: It colors me in a bad light, Judge.
25 The arrests, they were dismissed. Why should they even be in

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1 the report?

2 THE COURT: The arrests happened. They're part of
3 your criminal history. There is no indication as to why they
4 were dismissed. I'm certainly not taking them into account.
5 But the Bureau of Prisons when they decide what to do with a
6 person I think they're entitled to know whether somebody is
7 someone who has had no previous contact with the law or whether
8 he had previous frequent contact with the law, even though the
9 cases were dismissed. There's nothing about them, it seems to
10 me, that is any different in kind than the convictions.
11 They're all theft, fraud, trickery sort of offenses, except for
12 possession of marijuana. It's hard to imagine that any of that
13 is going to have any effect on Mr. Bartok's designation. But
14 to the extent it does, he can always take that up with the
15 Bureau of Prisons.

16 THE DEFENDANT: So that would be the appropriate place
17 to take it up, with the Bureau of Prisons?

18 THE COURT: You can always have -- if you're unhappy
19 with what happens to you in the Bureau of Prisons, they have
20 methods for you to address them.

21 THE DEFENDANT: I just didn't see that if the case was
22 dismissed, how I would have to have that held against me.

23 THE COURT: It's not being held against you. Let's
24 move on.

25 THE DEFENDANT: Maybe not in this court. I'm saying

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1 it might be held against me by Probation.

2 THE COURT: It's on your rap sheet. Whether it's in
3 the report or not, the information is out there.

4 THE DEFENDANT: It's on my rap sheet, granted, but if
5 the case was dismissed, there was no probable cause. It
6 shouldn't be reported.

7 THE COURT: No. That's your problem. You don't get
8 it that the case being dismissed doesn't mean there was no
9 probable cause. The case could have been dismissed for any one
10 of a number of reasons and we don't know what the reasons are.
11 It's a misperception on your part that a dismissed case means
12 there was no probable cause. The case could have been
13 dismissed because the victim didn't want to pursue it. The
14 case could have been dismissed because the witness died. The
15 case could have been dismissed because the officer didn't show
16 up for court. The case could have been dismissed because the
17 prosecutor was busy with more important things. The case could
18 have been dismissed for any number of reasons. It doesn't mean
19 there was no probable cause to arrest. It could be that. But
20 I don't see any indication of that. I'm not taking it into
21 account and I'm not here to adjudicate what the Bureau of
22 Prisons may or may not take into account. If you have a
23 grievance with the Bureau of Prisons, there's a grievance
24 procedure.

25 THE DEFENDANT: My grievance is just that I thought my

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1 arrest would color me in an improper light.

2 THE COURT: Anything more you want to stay?

3 THE DEFENDANT: That's it, Judge, thank you.

4 THE COURT: That's all you want to say?

5 THE DEFENDANT: That's all I want to say. Short
6 today.

7 THE COURT: That's fine. You don't have to say
8 anything of course.

9 Let me make clear, I don't want to hear anything more
10 about the dismissed counts in the presentence report. But if
11 there's anything else you would like to say on other subjects
12 before I sentence you, now is your opportunity.

13 THE DEFENDANT: No, I'm fine.

14 THE COURT: Okay. Mr. Collins, did you want to say
15 something?

16 MR. COLLINS: I just wanted to note for the record
17 that Mr. Turk has appeared and is sitting behind us at counsel
18 table.

19 THE COURT: Hello Mr. Turk.

20 MR. COLLINS: Obviously it's not indicated in the PSR,
21 the PSR was originally completed back in May, but just so that
22 there is a factual basis when your Honor is entering the
23 restitution and forfeiture numbers, that the restitution
24 numbers 2,929,411, and that is on the spreadsheet that you
25 noted you had received yesterday and has been provided to

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1 Ms Attias --

2 THE COURT: I did have, we can do it now, I did have
3 some questions about the the restitution and forfeiture, just
4 procedurally.

5 MR. COLLINS: Maybe I should just respond, maybe it
6 makes more sense for me to respond. Previously I think one
7 thing that Ms Attias said before sort of going on to the
8 mechanics of the restitution and the forfeiture, which is that
9 sort of this was a game that Mr. Bartok was playing.
10 Previously earlier I had said we would rest on our sentencing
11 memorandum, but the notion that this was some sort of a game
12 that Mr. Bartok was playing is simply outrageous. These were
13 people's lives. I know that Ms Attias has conveyed
14 Mr. Bartok's version of the events as set forth in her most
15 recently sentencing memoranda, that he consistently maintained
16 that he helped people and did not violate the law. Both are
17 demonstrably wrong on all accounts. It's just inconceivable
18 how somebody could receive all these victim impact statements
19 which are unanimous in the devastation that Mr. Bartok wreaked
20 upon their lives, people who lost their homes, people who gave
21 him essentially their last money, were thrown out of their
22 home, had no way to support their handicapped children and had
23 nowhere to go. One person who was living in a family member's
24 office.

25 The notion that Mr. Bartok believes that he actually

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1 assisted people, I frankly can't understand it. The notion
2 that he didn't violate the law even though along the way it is
3 clear he was told that what he was doing was wrong, and that
4 Mr. Bartok, what he just always does when told no, is that he
5 either seeks to delay or just argues back that you're wrong.
6 That's consistently what he's done and that's how he's
7 consistently violated the law. But the notion that this was
8 done to fuel his gambling issues, that was refuted at trial
9 through the testimony of Mr. Burke. While yes, Mr. Bartok
10 spent a lot of money gambling in both Aruba and Atlantic City,
11 it is clear that the money that came in from the defrauded
12 clients afforded Mr. Bartok and his family a lavish lifestyle.
13 That was more than gambling. It afforded them a high-end car,
14 country club memberships, travel all over the place, dinners
15 out that the people who they were defrauding would not get the
16 chance to have because they were paying Mr. Bartok. As a
17 result, that's why the government believes that a lengthy
18 sentence is appropriate in this case. And I'll move on to
19 discuss restitution and forfeiture, your Honor.

20 THE COURT: Procedurally, there's got to be more to it
21 than just the government gives me a piece of paper the night
22 before. I'm just looking at 3664. It says I shall order the
23 probation officer to obtain and include in the presentence
24 report or in a separate report information sufficient for me to
25 exercise my discretion in fashioning a restitution order. The

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1 report shall include a complete accounting of the losses, blah,
2 blah, blah. Then that has to be disclosed to both sides. And
3 there's a whole procedure we have to go through and then it
4 gets treated like any other sentencing fact. There can be
5 objections and a hearing and all that.

6 MS ATTIAS: Judge, I will say that I have been having
7 conversations with the government for weeks about the amount of
8 loss. Although some of the paperwork came down in the last few
9 days, these numbers are not a surprise to me, and I'm not
10 challenging the loss amount. I understand there are other
11 procedures you're talking about.

12 THE COURT: That gives me some comfort. It seemed to
13 me there was no opportunity for the defendant to object or even
14 review those numbers if they were only provided Tuesday night,
15 I believe it was.

16 MR. COLLINS: The government's position is that the
17 loss amount is higher than the restitution amount. The
18 restitution amount is based upon the amount of payment cards
19 that were recovered plus any other submissions that were made
20 to the government by people who said they had paid Mr. Bartok X
21 amount for services. We believe the loss amount is much higher
22 than the three million dollars that's here. However, this is
23 what we can point to in terms of proof, in terms of either
24 payment cards that we recovered from Revelations, or
25 submissions in terms of victim impact statements that were made

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1 and those numbers. People were submitting numbers up and to
2 and including the September 26th package that you received,
3 your Honor. I believe some of those victim impact statements
4 had more numbers as well.

5 THE COURT: So Ms Attias, have you had an opportunity
6 or do you want a greater opportunity to examine the restitution
7 numbers which I'm now hearing are less than the loss numbers,
8 because we can always do restitution after sentencing?

9 MS ATTIAS: Mr. Collins and Mr. Alberts and myself
10 have been discussing these numbers for weeks.

11 THE COURT: Restitution and loss numbers?

12 MS ATTIAS: Yes. We discussed their methods of
13 arriving at those numbers. I tried to shove them around a
14 little bit. We had a very full discussion about the numbers,
15 and I'm satisfied that I do not need any more time or
16 opportunity to challenge any of the numbers.

17 THE COURT: All right.

18 MR. COLLINS: For the record, your Honor, we
19 mentioned, we believe, the loss amount is higher than the 2.92
20 million figure because that's the number that we can point to
21 and we have a basis in fact for. That's why although we
22 believe there's a larger loss amount, then that larger loss
23 amount can be forfeited because we can't point to a specific
24 number, we're defaulting to the lower number of the 2.92
25 million.

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1 THE COURT: Let me understand the government's
2 position. Your position is the loss amount is what?

3 MR. COLLINS: Somewhere greater than four million
4 dollars.

5 THE COURT: And your position on the restitution
6 amount is.

7 MR. COLLINS: 2,929,411.

8 THE COURT: What are you seeking in forfeiture?

9 MR. COLLINS: We're seeking the same amount. Because
10 that's a figure that we can actually give, we can actually have
11 a basis for rather than essentially sort of a guesstimate.

12 THE COURT: And that's based on either the payment
13 records seized from the defendant's offices or information
14 you've received from the victim?

15 MR. COLLINS: I'm sorry, your Honor, just one moment.

16 (Pause)

17 MR. COLLINS: I'm sorry, your Honor. My understanding
18 is that the numbers are based upon payment cards that were
19 taken from Revelations during the course of the search or
20 payment cards that were tendered to the government by Veronica
21 Tobin. In addition, there is the basis in terms of deposits
22 that were made into the Revelations bank account being money
23 orders and checks. And further, information that was submitted
24 from the victims themselves through victim impact statements.

25 THE COURT: And I take it you took care not to double

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1 count. If a payment card had a corresponding check, you didn't
2 count it twice.

3 MR. COLLINS: Yes, we did not count it twice.

4 THE COURT: Okay.

5 MR. COLLINS: And there are instances in which people
6 asked, some of the people asked for an amount that equaled the
7 amount of their house or what they thought their house was
8 worth. We were only seeking to put into the restitution the
9 amounts that they were claiming they had paid Mr. Bartok, not
10 what they believed their ultimate harm was, i.e., for some
11 individuals who were looking to have a new house bought for
12 them.

13 THE COURT: All right. As to forfeiture, I got a
14 preliminary order of forfeiture last evening. We don't have
15 any jury finding on the forfeiture issues. Is it enough that
16 there were forfeiture allegations in the indictment and the
17 defendant got convicted? Doesn't the jury have to make some
18 kind of finding?

19 MR. ALBERTS: No, your Honor. If either of the
20 parties request a jury finding on the issue, then there is a
21 jury finding. But in the absence of that, the Court can make a
22 finding or forfeiture.

23 THE COURT: Where do I get that from? You know this
24 statute better than I do, I think. I see it, Rule 32.21(a).
25 "As soon as practical after a verdict or finding of guilty or

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1 after a plea on any count in an indictment regarding which
2 criminal forfeiture is sought, the Court must determine what
3 property is subject to forfeiture under the applicable statute.
4 The court's determination may be based on evidence already in
5 the record including any plea agreement and on any additional
6 evidence or information submitted by the parties and accepted
7 by the court as relevant and reliable. If forfeiture is
8 contested, on either party's request the court must conduct a
9 hearing after the verdict or finding of guilty." I must
10 promptly enter the preliminary order of forfeiture. I must do
11 it sufficiently in advance of sentencing to allow the parties
12 to suggest revisions or modifications unless doing so would be
13 impractical.

14 Does the defendant contest the forfeiture?

15 MS ATTIAS: No, Judge.

16 THE COURT: What, as a practical matter, Mr. Alberts,
17 is the difference between the forfeiture order and the
18 restitution order? I know it's all very good for stats. Why
19 does the government seek both?

20 MR. ALBERTS: Your Honor, we seek both for a couple of
21 reasons. One is in some instances they actually seek to
22 capture very different numbers. In this case we're seeking the
23 same forfeiture amount and restitution amount. The reason why
24 we seek both orders is first of all there are certain
25 procedural mechanisms where we're able to acquire property that

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1 is subject to forfeiture that we could not employ to go after
2 money that's subject to restitution. So there's different
3 statutes that allow us to pursue money that is abroad, for
4 example, that we could then acquire, forfeit, and provide
5 through the restoration mechanism to victims of the offense
6 that we could not use if there was simply a restitution order.

7 THE COURT: Do you think Mr. Bartok has some property
8 or money salted away abroad?

9 MR. ALBERTS: We don't know. He regularly went to
10 Aruba. We don't know what the properties are, we haven't been
11 able to ascertain that. But it's always possible. We always
12 seek these orders in case we acquire information that would
13 allow us to go after properties that wouldn't be available to
14 us under the restitution statute.

15 THE COURT: It does seem proper so I'm -- did I cut
16 you off?

17 MR. ALBERTS: The Second Circuit has also recognized
18 that it's appropriate to include both orders. Entering an
19 order of forfeiture does not -- or entering a restitution order
20 does not preclude the order from seeking forfeiture under the
21 applicable statutes.

22 THE COURT: All right. I have signed the preliminary
23 order.

24 Let me start with the 3553(a) factors. Let me start
25 with the Sentencing Guidelines, actually. Mr. Bartok has the

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1 distinction of being one of the few fraud defendants who has so
2 many specific offense characteristics applicable to him that he
3 has himself up to the level of a murderer. His base offense
4 level is seven under 2B1.1(a)(1). 18 levels are added under
5 2B1.1(b)(1)(J) because the offense involved more than 2.5
6 million dollars. Six levels are added under (b)(2)(C) because
7 the offense involved 250 or more victims. Two levels are added
8 under (b)(9)(B) because the offense involved bankruptcy fraud.
9 Two more levels are added under (b)(10)(C) because the offense
10 otherwise involved sophisticated means. And two levels are
11 added because the offense substantially endangered the
12 financial security of 100 or more victims under (b)(15)(C).
13 Four levels are added under 3B1.1(a) for defendant's role in
14 the offense. He was the organizer and leader of criminal
15 activity that involved five or more participants and was
16 otherwise extensive. Two levels are added for obstruction of
17 justice, although I don't get there quite the same way as the
18 probation officer. The probation officer sort of went directly
19 to 3C1.1 and I think that's what you do when the defendant
20 obstructed his criminal case. What I do, which comes out to
21 the same place, is I go to 2J1.2 which is the obstruction of
22 justice guideline. That in turn sends you to 3C1.1 and per
23 note 8, as the Probation Office notes, the obstruction counts
24 are grouped with the fraud counts and then two levels are
25 added. So we may have been talking about the same thing and

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1 they may have just done it in shorthand in the Probation
2 Report. That gets us up to level 43 for the total offense
3 level.

4 The defendant has four previous convictions. A fraud
5 conviction from 1981 which does not result in any criminal
6 history points because of his age. An odometer fraud
7 conviction from 1986 which also does not result in any criminal
8 history points. A false records conviction from 1992 which
9 also does not result in any criminal history points but which
10 involves the falsification of certificates of title for a Ford
11 Bronco and a Cadillac. And a theft by deception and issuing a
12 bad check conviction from 1994 which results in two criminal
13 history points per our earlier discussion and which involved a
14 bad check and somehow getting some money by deception from an
15 individual. Two criminal history points puts the defendant in
16 Criminal History Category II and his guidelines range is life.

17 Whether to impose -- I can't impose a life sentence
18 because none of the counts of conviction have a maximum of
19 life. So under 5G1.2(d) the guideline sentence is capped at
20 the maximum sentences as stacked -- actually the guideline
21 sentence is life but essentially the guidelines direct me if I
22 can't impose life to cap it at whatever the statutory maximums
23 are and impose all the sentences consecutively.

24 I agree with Ms Attias that that's sort of ridiculous
25 in this case. And I'm not going to impose 95 years. But I am

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1 going to impose a long sentence. I don't find that the 95
2 years is an incorrect application of the guidelines, but under
3 my authority under *Booker* to vary, I'm going to vary.

4 Where I'm going to end up is going to depend on the
5 3553(a) factors, the first of which is the nature and
6 circumstances of the offense. This is about as serious a white
7 collar offense as one comes across in the day-to-day life of
8 this courthouse. Mr. Bartok did something that most people
9 could not bring themselves to do, which is he ripped off
10 vulnerable people who he knew were coming to him in
11 desperation, and who were petrified of losing their houses.
12 And the only thing he gave them was the opportunity to be
13 suckered out of more of their money before they ultimately lost
14 the house. And if indeed he was just a good guy trying to help
15 them stay in their houses, there was no need for him to lie to
16 them the way he did. And even if he was a good guy trying to
17 help them stay in their houses, it doesn't excuse all the lies
18 he told to the bankruptcy court.

19 And we heard from some of the victims at trial
20 including one who got dragged out of his bed in handcuffs in
21 front of his family because of Mr. Bartok's lies to him and to
22 the bankruptcy court. And I read the letters, which are
23 heartbreaking, describing how these desperate people thought
24 Mr. Bartok was going to help them and how desperate they were
25 to believe him and how he ended up making things that much

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1 worse for them and how stupid they now feel for having believed
2 him.

3 And Mr. Bartok was running this business for many
4 years. He knew perfectly well that he wasn't helping anybody
5 buy their house back at a foreclosure auction. That was just
6 complete bull. And Mr. Bartok knew it. He's a very
7 accomplished con man and it's part of being a con man that at
8 some point you start to believe your own bull. It's effective
9 when you act like you really believe your own bull. But it
10 cannot have failed to cross Mr. Bartok's mind as he told each
11 of those poor desperate homeowners in his office about how they
12 would be able to get their homes back at a foreclosure auction
13 that he had never gotten anybody's home back at a foreclosure
14 auction. I don't think it's an overstatement to say it's
15 really despicable conduct, and unlike a lot of crimes that
16 people commit where the consequences are sort of removed. If
17 you sell a kilo of coke, you don't see the addict who uses it
18 or the crackhead who is living under a bridge somewhere. You
19 don't see the children who are neglected by that person. You
20 can sort of distance yourself, which doesn't excuse anything.
21 But in this case, Mr. Bartok met all the desperate people and
22 screwed them, pardon the colloquialism, without any regard
23 whatsoever for the havoc he was wreaking on these people he
24 knew and who he knew were depending on him and who would call
25 him in desperate panic situations after they realized that he

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1 had done nothing but postpone the inevitable and take their
2 money in the meantime. And he just did not care about them at
3 all. All he cared about was his own greed. He was a scary
4 individual in that regard. And a very dangerous one.

5 That takes me to the history and characteristics of
6 the defendant. He's got four previous convictions for fraud
7 type offenses. Those were small potatoes compared to this one,
8 of course. But he's one of the most selfish and manipulative
9 people I've ever seen in a courtroom and that's saying a lot.
10 I have, through my line of work, met a lot of con men and
11 Mr. Bartok is one of the most conscience-free and manipulative
12 and narcissistic of that bunch. Four prior convictions didn't
13 seem to pierce what little there might be of his conscience.

14 And as I said, this particular fraud went on for a
15 long time and he knew for many years that he wasn't helping
16 people keep their houses and just kept going because he doesn't
17 care about those people. And he took the proceeds and he made
18 a very nice life for himself. He's driving a Mercedes, he's
19 going to Aruba for weeks and months at a time, he's going to
20 Atlantic City, he's living high on the hog at the expense of
21 his victims. I don't doubt that he provided well for his
22 family. It's just that it was with other people's money.

23 For reasons I don't understand, Mr. Bartok's wife and
24 sister have stood by him. Ms Bartok told Probation that she
25 doesn't think her husband did anything wrong and she feels he's

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1 not a threat to society and he's served enough time. Given
2 that she sat here for the trial, that is one of the more
3 massive either whoppers or cases of denial I've ever seen. I
4 don't see how you could sit through the trial and not think
5 Mr. Bartok did anything wrong or that he's already served
6 enough time. But I'm sure she, after enjoying the fruits of
7 his fraud, is in a difficult place right now and prefers to
8 delude herself. She also probably knew about the four previous
9 convictions and it's hard to imagine that she didn't know while
10 this was going on that her husband was not legitimately raking
11 in all this money.

12 But it is to his credit that Mr. Bartok apparently has
13 been a good brother and husband who has inspired that loyalty.
14 But that's about the only good thing I can say about Mr. Bartok
15 based on what I know.

16 I have to insure that the sentence imposed reflects
17 the seriousness of the offense. I've already talked about
18 that. I have to consider the need for the sentence imposed to
19 promote respect for the law. That is obviously an issue with
20 Mr. Bartok, not only the four prior convictions, but the
21 injunctions by the bankruptcy court that he disregarded. He is
22 somebody who has no respect for the law. And his conduct
23 during the course of this trial, the course of this case,
24 convinces me that he thought he could put one over on this
25 Court. So only a really significant sentence has a chance of

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1 waking Mr. Bartok up to the need to conform one's conduct to
2 the law.

3 I need to provide a just punishment that will be seen
4 by victims and by society to be sufficient to address
5 Mr. Bartok's behavior. I need to afford adequate deterrence,
6 not just to him but to other people out there. There are a lot
7 of these mortgage foreclosure rackets and other people ought to
8 see what can happen if you do it. Protecting the public from
9 further crimes is a very important factor in Mr. Bartok's case.

10 I see zero chance that if he were at liberty he would
11 conform his conduct to the requirements of the law. And I
12 think he does need to be locked up so that he cannot have the
13 capacity to commit further crimes. I don't think the need for
14 treatment is a factor here. Mr. Bartok has health issues that
15 can be treated either inside or outside the Bureau of Prisons.
16 I have considered the Sentencing Guidelines and the
17 Commission's policy statements. In this case the way the
18 guidelines come out, which equates this defendant's sentence
19 with somebody who has committed murders, doesn't make a lot of
20 sense.

21 I do recognize why each of the factors that the
22 Commission has applied in 2B1.1 and which apply, throughout the
23 guidelines, and which apply in this case, are aggravators.
24 There's no question that Mr. Bartok deserves a very, very
25 substantial sentence. But 95 years for someone who is 67 is

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1 just a little crazy.

2 I've considered the need for avoid unwarranted
3 sentencing disparities among similarly situated defendants.
4 And Mr. Bartok isn't a Bernie Madoff, but he's in a lot of ways
5 a miniMadoff. But the most important factors here are the
6 absolutely despicable nature of the offense, the incorrigible
7 selfishness and manipulation of the defendant, and the need to
8 protect the public from further crimes.

9 So the sentence that I find sufficient but not greater
10 than necessary to serve the purposes of sentencing is one that
11 I recognize will amount to a life sentence for Mr. Bartok. Let
12 me just check my math. 264 months. 22 years. I note that
13 Probation was recommending the guideline sentence of 95 years
14 which was a surprise, and the probation officer said the
15 recommendation was not made lightly and it essentially means a
16 life sentence for the defendant. So Probation shares my view
17 that this defendant is really the worst of the worst in terms
18 of fraudsters. As I said, I recognize that at Mr. Bartok's age
19 this is essentially a life sentence and I think it's
20 appropriate. He's been committing fraud for a good part of his
21 life and he's paid a very minimal price for it up until now and
22 now the chickens have come home to roost.

23 I'm going to impose the sentence as follows. On
24 Counts 1, 2, 5 and 7 I'm imposing 20 years on each count which
25 is the maximum, to run concurrent to one another. And on

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1 Counts 3, 4 and 6, I'm going to impose 24 months to run
2 concurrent with one another and consecutive to each other --
3 excuse me -- and consecutive to the sentences on Counts 1, 2, 5
4 and 7. And that is the sentencing "plan" that I would
5 reconsider if any of the counts were to be reversed on appeal
6 in a way that would affect the total.

7 I have to impose supervised release. And who knows,
8 maybe Mr. Bartok will surprise us and get out of jail as an old
9 man. In that event, I'm going to impose supervised release of
10 three years on each count to run concurrently on the following
11 conditions. First the mandatory conditions. The defendant
12 shall not commit another federal, state or local crime. The
13 defendant shall not illegally possess a controlled substance.
14 The defendant shall not possess a firearm or destructive
15 device. The defendant shall cooperate in the collection of DNA
16 as directed by the probation officer. I'm going to suspend the
17 mandatory drug-testing conditions because I find the defendant
18 poses a low risk of future substance abuse.

19 I'm also imposing the standard conditions 1-13 along
20 with the following special conditions. The defendant shall
21 provide the probation officer with access to any requested
22 financial information. The defendant shall not incur new
23 credit charges or open additional lines of credit without the
24 approval of the probation officer unless the defendant is in
25 compliance with an installment payment schedule with respect to

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1 his criminal financial obligations. The defendant shall
2 refrain from participating in mortgage foreclosure or
3 bankruptcy matters. The defendant shall submit his person,
4 residence, place of business, vehicle or any other premises
5 under his control to search on the basis that the probation
6 officer has reasonable belief that contraband or evidence of a
7 violation of the conditions of release may be found. The
8 search must be conducted at a reasonable time and in a
9 reasonable manner. Failure to submit to search may be grounds
10 for revocation. The defendant shall inform any other occupants
11 that the premises may be subject to search pursuant to this
12 condition. The defendant is to report to the nearest Probation
13 Office within 72 hours of release from custody. I recommend
14 the defendant be supervised by his district of residence.

15 I'm imposing the mandatory one hundred dollar special
16 assessment on each count for a total of \$700 which is due
17 immediately. And I am imposing restitution in the amount set
18 forth in the spreadsheet that the government has provided in
19 the total amount of \$2,929,411. I will incorporate that spread
20 sheet, it will be attached to the judgment, into today's
21 record. And I am ordering that that restitution amount be
22 joint and several with co-defendants Kathleen Addario and
23 Veronica Tobin.

24 I'm further directing that if the defendant is engaged
25 in a Bureau of Prisons nonUNICOR work program that he shall pay

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1 \$25 per quarter towards the criminal financial penalties. If
2 he participates in the Bureau of Prisons UNICOR program as a
3 Grade 1-4 he shall pay 50 percent of his monthly UNICOR
4 earnings towards the criminal financial penalties consistent
5 with Bureau of Prisons regulations at 28 CFR 544.11. The
6 restitution shall be paid in monthly installments of ten
7 percent of gross monthly income over a period of supervision to
8 commence 30 days after the date of judgment or the release from
9 custody. The defendant shall notify the United States Attorney
10 for this district within 30 days of any change of mailing or
11 residence address that occurs while any portion of the
12 restitution remains unpaid. I'm not imposing a fine in light
13 of the other financial penalties that I am imposing. And I'm
14 also, as I said earlier, directing forfeiture in the amount of
15 \$2,929,411.

16 Does either lawyer know of any legal reason why the
17 sentence I'm described should not be imposed?

18 MS ATTIAS: No, Judge.

19 MR. COLLINS: No, your Honor.

20 THE COURT: All right. Then the sentence I've
21 described is the sentence I impose. That's the sentence I find
22 sufficient but not greater than necessary to serve the purposes
23 of sentencing.

24 Mr. Bartok, usually at this point in the sentencing I
25 give the defendant a little pep talk about finding something in

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1 the long period of time that he or she will be serving that is
2 meaningful and can make your life not a complete waste.
3 Sometimes I'm talking to 20 year old gang bangers when I give
4 that speech, and I actually have more confidence in their
5 ability to do that than I do in yours. But I nevertheless hope
6 that you can find something honest that you can do in prison
7 that will be rewarding to you, like work at a legit job, or
8 teach other inmates to read, something that can begin to make
9 up for what you've done. You are an expert at convincing
10 yourself that everyone is being unfair to you and you didn't do
11 anything wrong and you don't understand what the problem is.
12 And now you're going to have a long time to think about it and
13 to stop BSing yourself and to face the facts that everything
14 that's coming down on you now is a result of your choice to be
15 a scam artist. I hope you enjoyed it while it lasted, because
16 it's probably the last fun you're going to be having. And
17 maybe some day, I doubt it, but maybe some day you'll recognize
18 how awful what you did to all those people was. But like I
19 said, time will tell.

20 You have the right to appeal your conviction and
21 sentence, Mr. Bartok. If you want to appeal and you're unable
22 to pay the cost of an appeal you can apply for permission to
23 appeal without paying. Any notice of appeal must be filed
24 within 14 days of the entry of the judgment of conviction and
25 Ms Attias will assist you with that. I do think you should

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1 have new counsel on appeal, but I don't know that I effect
2 that. I think that has to be done through an application to
3 the Circuit.

4 THE DEFENDANT: Could you get Ms Attias to file the
5 appeal or your clerk?

6 THE COURT: Ms Attias will file the notice of appeal
7 for you. In all other respects she is relieved except she will
8 take whatever steps are necessary to make sure that the Circuit
9 assigns new counsel. If I'm wrong about that, I'm happy to do
10 it. But I've never, I don't think I can appointment somebody
11 off the Circuit panel.

12 MS ATTIAS: I'll look into that, Judge. I'll make
13 some phone calls today.

14 THE COURT: All right. Let me ask the government as
15 to its intentions with counts 8 and 10. Are you going to be
16 asking me to dismiss them?

17 MR. COLLINS: We're moving to dismiss Counts 8 and 10
18 of the S4 indictments and also the underlying indictments.

19 THE COURT: Counts 8 and 10 of the S4 and the
20 underlying indictments are dismissed. There is one more thing
21 I want to say --

22 MR. COLLINS: As to Mr. Bartok, obviously.

23 THE COURT: Yes. There's one more thing I want to say
24 which has to do with the bankruptcy court and the important
25 work that's done over there and the impression that some

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1 people, certainly Mr. Bartok may have about how that's not
2 really a court or something or doesn't really count or you can
3 lie. I hope this conviction sends the message there are very
4 severe consequences for manipulating the bankruptcy system and
5 it is a wonderful thing in this country that people who for no
6 fault of their own get into a financial jam have a way to get
7 out of it. And it's people like Mr. Bartok who bring that
8 whole system into disrepute. But it works in this case because
9 the appropriate authorities were able to bring Mr. Bartok's
10 crimes to the prosecutors and at least Mr. Bartok's
11 manipulation of the system has stopped.

12 I don't know if anybody will take notice of
13 Mr. Bartok's sentencing but I hope they will and I hope some of
14 them are people who will think twice before making false
15 filings or committing other frauds in connection with the
16 bankruptcy process. Is there anything else we should do now?

17 MS ATTIAS: Your Honor, although he declined to make a
18 statement before, Mr. Bartok has asked you whether or not he
19 can make a statement now.

20 THE COURT: No.

21 All right. We are adjourned. Thank you.

22 (Record closed)